

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-294

FEBRUARY TERM, 2004

	} APPEALED FROM:
	} Environmental Court
	}
In re Appeal of J.D. Associates	} DOCKET NO. 253-11-02 Vtec
	} Trial Judge: Merideth Wright
	}
	}

In the above-entitled cause, the Clerk will enter:

Elizabeth Darden appeals from the environmental court=s order denying her request for a permit to erect a shed on her property. * She argues that the court erred in determining that the proposed shed was not an A accessory use@ under the Town of Morrisville= s zoning bylaws. We reverse.

Darden owns an undeveloped ten acre parcel of land within an area zoned as A rural residential with agriculture.@ Darden leases part of the property to a third party for horse pasturing, and uses the remainder of the property for recreational purposes, including walking her dogs. In 2002, Darden sought a permit to erect a twelve-foot by twelve-foot shed and a fence on her property. The town zoning administrator approved the permit, and adjoining landowner J.D. Associates appealed to the town development review board. After a hearing, the board upheld the permit, concluding that the fence and the shed were accessory uses permitted under the town= s zoning bylaws. J.D. Associates then appealed to the environmental court. On cross-motions for summary judgment, the environmental court upheld the permit for the fence, but vacated the town= s decision regarding the shed. The court concluded that the shed did not fit within the definition of A accessory use@ because it was not incidental and subordinate to the principal use of the land. Darden appealed.

On appeal, Darden argues that the environmental court erred in determining that her proposed shed was not an A accessory use@ under the town zoning bylaws. She maintains that the principal use of the property is horse pasturage, and that the erection of the shed is incidental and subordinate to that use. According to Darden, the environmental court erred by interpreting the ordinance to require that the proposed use be related to the existing use of the property rather than simply being another minor or secondary use.

We review the environmental court= s construction of a zoning ordinance to determine whether its interpretation is clearly erroneous, arbitrary, or capricious. In re Casella Waste Mgmt., 2003 VT 49, & 6, 830 A.2d 60. Zoning ordinances are interpreted according to the general rules of statutory construction. Id. Thus, we look first look to the plain meaning of the ordinance. Id. If the plain meaning of the ordinance is clear, we need go no further. Id. The town development review board is responsible for executing town zoning regulations, and absent compelling indication of error, we will sustain its interpretation. In re Duncan, 155 Vt. 402, 408 (1990) (internal quotation marks and citation omitted).

The town= s bylaws define an A accessory use or structure@ as A a use or structure on the same lot with, and of a nature customarily incidental and subordinate to the principal use or structure.@ The town development review board

concluded that Darden's proposed shed fit within the definition of an accessory use. The environmental court reversed, reasoning that the shed could be approved only as an accessory structure if it were used in connection with the horse pasturage, or used to store materials and tools for maintaining the fence on the property. Any other use of the property, the court explained, such as outdoor recreation or a dog training business, would fall into a conditional use category for which Darden would need to obtain a conditional use permit before the shed could be considered as an accessory to it.

We conclude that the environmental court committed clear error in interpreting the term an accessory use. Giving the terms within the bylaw their plain meaning, an accessory use is one that is dependent on or affiliated with the land's primary use, and one that holds a lower rank, class, or position. Black's Law Dictionary 1439, 1540 (7th ed. 1999); see also, E.C. Yokley, *Zoning Law & Practice* ' 8-2 (4th ed. 2001) (An incidental and subordinate means a use that is minor in relation to the permitted use and bears a reasonable relationship to it). The record indicates that Darden uses her land for horse pasturage and outdoor recreation, including walking her dogs. She indicated that she would use the shed to store maintenance equipment and dog training aids. The erection of a shed for this purpose is both affiliated with the primary use of the property, and subordinate to it. We therefore reverse the decision of the environmental court.

Reversed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice

Footnote

* We note that Wilhelm Jaremzuk is appearing pro se on behalf of appellee J.D. Associates in this appeal. Generally, a corporation may not proceed pro se unless it satisfies the criteria set forth in *Vermont Agency of Natural Res. v. Upper Valley Reg'l Landfill Corp.*, 159 Vt. 454, 458 (1992). The pro se appearance in this case is authorized by this Court's entry order of July 29, 2003.